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**Benton County
WATER CONSERVANCY BOARD**

BENT-11-03

Record of Decision

Applicant: AgReserves Inc., %AgriNorthwest

Application Number: CS4-13134C@3(A)

This record of decision was made at an open public meeting of the Benton County Water Conservancy Board held on October 27, 2011, with any changes to ROE/ROD based on information received from the applicant and WADOE staff. This ROE/ROD was reviewed and approved by the undersigned.

(X) Approval:

The Benton County Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination and submits this record of decision and report of examination to the Department of Ecology for final review or consideration.

() Denial:

The Benton County Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination and submits this record of decision to the Department of Ecology for final review or consideration.

Signed [Signature] Date: 10/27/2011
Darryll Olsen, Ph.D., Chairman
Benton County Water Conservancy Board

Approves

Denies

Recused

Abstains

Excused Absence

Signed [Signature] Date: 10/27/2011
John Jaksch, Ph.D., Vice Chairman
Benton County Water Conservancy Board

Approves

Denies

Recused

Abstains

Excused Absence

Signed _____ Date: 10/27/2011
Matt Berg, Treasurer
Benton County Water Conservancy Board

Approves

Denies

Recused

Abstains

Excused Absence

Final ROE/ROD Mailed to the Department of Ecology, Regional Office of Ecology, via tracked mail, and other interested parties on or before 11/27/2011.

11/11/2011 P.C.

BENTON COUNTY WATER CONSERVANCY BOARD

Application/Review for Change/Transfer

OF A RIGHT TO THE BENEFICIAL USE OF THE PUBLIC WATERS OF
THE STATE OF WASHINGTON

RECEIVED

NOV 09 2011

Report of Examination

Prepared by Members of the BCWCB

DEPARTMENT OF ECOLOGY - CENTRAL REGIONAL OFFICE



Surface Water

Ground Water

DATE APPLICATION RECEIVED July 2011 Public Notice	WATER RIGHT DOCUMENT NUMBER CS4-13134C@3(A)	WATER RIGHT PRIORITY DATE August 14, 1962	BOARD-ASSIGNED CHANGE APPLICATION NUMBER BENT-11-03
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NAME AgReserves, Inc., %AgriNorthwest, Attention Tom Mackay, President of AgriNorthwest	(CITY) Kennewick	(STATE) WA	(ZIP CODE) 99336
ADDRESS (STREET) 7404 W. Hood Pl.			

Changes Proposed: ☐ Change purpose ☐ Add purpose ☐ Add irrigated acres ☒ Change point of diversion/withdrawal
X Added point of diversion/withdrawal. No Change place of use ☐ Other (Temporary, Trust, Interties, etc.)

Request is for added point of withdrawal.

SEPA

The board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC and has determined the application is: ☒ Exempt (water right) ☐ Not exempt (proposed project)

The water right change/transfer described herein is exempt from SEPA review, as the water amount involved is under the SEPA threshold criteria of 50 cfs, per RCW provisions for surface water source permits/certificates.

BACKGROUND AND DECISION SUMMARY

Existing Right

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE 4.5 cfs Commercial and Industrial Use	MAXIMUM ACRE-FT/YR 1,050 Commercial and Industrial Use	TYPE OF USE, PERIOD OF USE Year Round Commercial and Industrial Use				
SOURCE			TRIBUTARY OF (IF SURFACE WATER) Mainstem Columbia River, John Day Pool				
AT A POINT LOCATED: PARCEL NO. Diversion Point: (and as described on certificate/change)	¼ NW	¼ NW1/4	SECTION 15	TOWNSHIP N. 5N	RANGE 27 EWM	WRIA 31	COUNTY. Benton

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

All within:

In T.5N, R.27 EWM, **ALL** of section 1; **AND** (N1/2 of N1/2), (SW1/4 of NW1/4), (S1/2 of SE1/4 of NW1/4), (NW1/4 of NW1/4 of SW1/4), and (NW1/4 of NE1/4 of SW1/4), with all these portions lying north of County Road all being within Section 12; **AND** (E1/2 of SW1/4 of NE1/4) and (SE1/4 of NE1/4) all being within section 12.

In T.5N, R.28 EWM, section 5, (N1/2) and (N1/2 of S1/2); **AND** that portion of section 6 lying north of the relocated S.P. and S.

In T.6N, R.28 EWM, all of section 31 **EXCEPT** the NE1/4.

In T.6N, R.27 EWM, **ALL** of section 36.

See parcel Nos. below under Board Decision.

Proposed Use

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE 4.5 cfs	MAXIMUM ACRE-FT/YR 1,050	TYPE OF USE, PERIOD OF USE Year-Round Commercial and Industrial Use.				
Commercial and Industrial Use			Commercial and Industrial Use				
SOURCE Surface Water			TRIBUTARY OF (IF SURFACE WATER) Mainstem Columbia River, John Day Pool				
AT A POINT LOCATED: PARCEL NO.	1/4	1/4	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
Diversion Point: (and as described on certificate/change)	NW1/4 AND NE1/4	NW1/4	15 12	5N 5N	27 EWM 27 EWM	31 31	Benton

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

All within:

In T.5N, R.27 EWM, **ALL** of section 1; **AND** (N1/2 of N1/2), (SW1/4 of NW1/4), (S1/2 of SE1/4 of NW1/4), (NW1/4 of NW1/4 of SW1/4), and (NW1/4 of NE1/4 of SW1/4), with all these portions lying north of County Road all being within Section 12; **AND** (E1/2 of SW1/4 of NE1/4) and (SE1/4 of NE1/4) all being within section 12.

In T.5N, R.28 EWM, section 5, (N1/2) and (N1/2 of S1/2); **AND** that portion of section 6 lying north of the relocated S.P. and S.

In T.6N, R.28 EWM, all of section 31 **EXCEPT** the NE1/4.

In T.6N, R.27 EWM, **ALL** of section 36.

See parcel Nos. below under Board Decision.

Water Board Decision

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE 4.5 cfs Commercial and Industrial Use	MAXIMUM ACRE-FT/YR 1,050 Commercial and Industrial Use	TYPE OF USE, PERIOD OF USE Year-Round Commercial and Industrial Use.				
SOURCE Surface Water			TRIBUTARY OF (IF SURFACE WATER) Mainstem Columbia River, John Day Pool				
AT A POINT LOCATED: PARCEL NO. Diversion Point: (and as described on certificate/change)	¼ NW1/4 AND NE1/4	¼ NW1/4 NW1/4	SECTION 15 12	TOWNSHIP N. 5N 5N	RANGE 27 EWM 27 EWM	WRIA 31 31	COUNTY. Benton

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

All within:

In T.5N, R.27 EWM, **ALL** of section 1; **AND** (N1/2 of N1/2), (SW1/4 of NW1/4), (S1/2 of SE1/4 of NW1/4), (NW1/4 of NW1/4 of SW1/4), and (NW1/4 of NE1/4 of SW1/4), with all these portions lying north of County Road all being within Section 12; **AND** (E1/2 of SW1/4 of NE1/4) and (SE1/4 of NE1/4) all being within section 12.

In T.5N, R.28 EWM, section 5, (N1/2) and (N1/2 of S1/2); **AND** that portion of section 6 lying north of the relocated S.P. and S.

In T.6N, R.28 EWM, all of section 31 **EXCEPT** the NE1/4.

In T.6N, R.27 EWM, **ALL** of section 36.

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD

In T. 5 N., R. 27 E.W.M:

All of Section 1. (Parcel Nos. 101571000001000 and 101571000002000)

AND

N½N½, SW¼NW¼, S½SE¼NW¼, NW¼NW¼SW¼ and NW¼NE¼SW¼ with all these portions lying north of the County Road all being within Section 12.

AND

E½SW¼NE¼ and SE¼NE¼ all being within Section 12. (Parcel Nos. 112571000001001 (recent county parcel segregation to 112572012982001 and 112572012982002) and 112571000001002)

In T. 5 N., R. 28 E.W.M:

N½ and N½ S½ all being within Section 5. (Parcel No. 105581000001001)

AND

That portion of Section 6 lying north of the relocated S.P. and S. (Parcel No. 106582000001002)

In T. 6 N., R. 28 E.W.M:

All of Section 31, **except** the NE¼. (Parcel No. 131680000000000)

In T. 6 N., R. 27 E.W.M:

All of Section 36. (Parcel No. 836670000000000)

ATTN:

Proof Examiner
use this
description; it
is from the
certificate.

DESCRIPTION OF PROPOSED WORK

The certificate is designated for commercial/industrial use for a site located along the John Day Pool, Columbia River (Horse Heaven Hills). The water right is in good standing per previous change orders identified by the Water Board.

The applicant would add a groundwater point of withdrawal (existing well) to the existing water right, with the groundwater point of withdrawal in direct hydraulic continuity with the surface water source (Columbia River). This change will add greater flexibility to the use of the water right, operating in conjunction with the applicant's existing production agriculture lands and facilities.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE:

Immediately

COMPLETE PROJECT BY THIS DATE:

By January 1, 2013

COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE:

By January 1, 2016

NOTE: The Water Board establishes the development schedule, as required under RCW 90.80.070, 90.80.080, and WAC 173-153-130. The schedule may be extended by WADOE if diligence is demonstrated in the completion of this project.

REPORT OF EXAMINATION
Prepared by Members of the BCWCB

BACKGROUND

A change/transfer application for permit CS4-13134C@3(A) was received and accepted by the Water Board in July 2011 with further information received in October (engineer's report). This application requests adding a point of withdrawal to the existing water right, with the groundwater point of withdrawal in direct hydraulic continuity with the surface water source (Columbia River).

The applicant seeks greater flexibility in the use of the water right, and the change would be consistent with allowed use and changes under RCW 90.03.380 and other provisions of the water code.

The existing water right is in good standing and being fully developed under a previous change/transfer order.

Attributes of the water right as currently documented:

Name on certificate, claim, permit: AgReserves, Inc., % AgriNorthwest

Water right document number: S4-13134(A)C under change CS4-13134P@2(A).

As modified by permit change number: CS4-13134C@3(A).

Priority date, first use: August 14, 1962.

Water quantities: Qi: 4.5 cfs Qa: 1,050 acre-ft./year.

Source: Surface Water, Columbia River Mainstem, John Day Pool

Point of diversion/withdrawal: See above and attachments.

Purpose of use: Commercial and Industrial.

Period of use: Year-round use.

Place of use: See above and attachments

Existing provisions: See attachments.

Tentative determination of the water right:

See Water Board's Decision Above; water right is in certificate stage being developed by the applicant per previous change orders.

History of water use:

The water right is being used for commercial and industrial development at the Horse Heaven Hills site, as part of the production agriculture holdings of the applicant.

Previous changes:

The water right has been subject to previous change orders, see attachments.

SEPA:

As noted above, the water right change request is exempt based on surface water criteria. SEPA review compliance is present.

COMMENT AND PROTESTS

Public notification for the applicant's request was filed in the Tri-City Herald. A copy is provided in the Public Notice attachments. The WADOE/Water Board did not receive a protest notice, or comments, from a third party.

The application has been distributed to several state resources agencies, tribes, and interested parties. No comments have been received from these parties concerning the application.

Issues Raised by WADOE:

The Water Board has provided the WADOE CRO with the change/transfer application and public notice, and a Water Board representative has discussed the change request with WADOE staff, and requested an explicit identification of any issues of concern related to the change request or the Water Board's preparation of the ROE/ROD. A question about signature (application) clarity on the application was raised.

Protests:

Date: None Received.

This was recognized by the board as a ☐ Protest ☐ Comment

Name/address of protestor/commenter:

Issue:

Board's analysis:

Other: None.

INVESTIGATION

Prepared by Members of the BCWCB

The following information was obtained from site inspections, technical reports and documents, research of department records, and discussions with the applicant's technical consultant and other interested parties; as well as discussions with the WADOE staff.

Proposed project plans and specifications:

As noted above, the applicant will use this water right to service commercial and industrial projects, per current authorized water volumes. The water right will involve the use of one surface water pump station, already in existence, with existing water mainline and distribution systems; along with an added (existing) groundwater well.

The applicant's intent is to continue the use of CS4-13134C@3(A) at its existing place of use, as described above.

A. Key Technical Issues—Water Right Review:

This investigation has included several issues:

Tentative Determination:

In order to make a water right change decision, the Board must make a tentative determination on the validity and extent of the right. The Board has made the tentative determination as displayed upon the first section of this

report. There are several circumstances that can cause the board's tentative determination to differ from the stated extent of the water right within water right documentation. Water right documents attempt to define a maximum limitation to a water right, rather than the actual extent to which a water right has been developed and maintained through historic beneficial use. Additionally, except for a sufficient cause pursuant to RCW 90.14.140, water rights, in whole or in part, not put to a beneficial use for five consecutive years since 1967 may be subject to relinquishment under Chapter 90.14.130 through 90.14.180 RCW. Water rights may additionally be lost through abandonment. The Board's tentative determination was based upon the following findings.

First, the water right applicant holds a valid water right certificate in good standing, and it is on file with the WADOE. The water right is subject to the surface water code provisions, including RCW 90.03.380.

The certificate is valid as stands, subject to subsequent change actions by the Water Board and any WADOE administrative changes affecting development.

Second, the change/transfer request must be consistent with RCW 90.03.380, and related water code statutes. The Water Board confirmed this requirement per previous change order decisions, and the applicant's current change request does not affect this previous review.

Third, under the change request, the total amount of water withdrawal from the existing right and proposed change cannot exceed the amount within the currently permitted water right. The change/transfer request must not exceed the existing water right limits; no enlargement of the water right is allowed.

The Water Board notes that this request requires no expansion of the water right, as designated under the existing certificate. The applicant is actively developing the water right, taking into account development along with other nearby water rights, and the change request would not directly affect other water rights owned by the applicant.

And fourth, based on the above information and analyses herein, the Water Board has determined that the full amount of the said water right for change/transfer is presented within the above "Board Decision" summary, and should be the amount not exceeded by the applicant, per the superseding certificate issued by WADOE.

Hydrologic, and other technical investigations:

First, based on detailed technical review/discussions with the applicant, a review of the applicant's technical report, and the Water Board's experience with nearby surface/groundwater diversions/withdrawals, it is concluded that the requested change/transfer will divert water from the same body of water (and management area) as that allowed under the existing water right. The existing pump station will be used, located within the mainstem of the Columbia River, John Day Pool, along with a well pumping in direct hydraulic continuity from the surface water source.

Second, the change request cannot create impairment. The Water Board has reviewed with the applicant information on potential impairment, the applicant's technical report, along with the WADOE point of diversion records, and concludes that impairment is not an issue for this change request. The point of diversion/withdrawal is consistent with the impairment standards under the water code and Ecology standards previously reviewed with the Water Board. Also, as a senior (pre-1980) water right, there will be no impairment to any other water right withdrawing water from the John Day Pool; and the previous change order affecting any junior portions of the water right will be subject to critical flow regulations.

Further, it is noted that:

1) For this immediate area, no record/affirmation of impairment has been noted by the Water Board or WADOE.

2) The Water Board has required applicant to review impairment issues of the applicant's change request. This review indicates that the change action will not impair other water rights.

3) Based on the public notice of this change request, the Water Board has received no impairment issue comments from other existing water right holders, including those who divert water from sites close to (within the McNary-John Day Pools) the applicant's existing diversion site.

Third, in a previous change order, the Water Board reviewed potential year-round water use impacts, for the period outside the previous authorized use (November-March) from the original water right, and concluded that impairment to other water rights is not an issue. The existing water rights are classified under pre- and post-1980 seniority (WAC 173-531A). Withdrawals after 1980 are subject to either WAC 173-531A and 173-563, or RCW 90.90.

The Water Board's previous change order determined that the year-round use outside the original permitted use period would be subject to instream flow regulations under WAC 173-563 (see attachment). These regulations establish minimum instantaneous and weekly instream flows for the mainstem Columbia River during critical flow conditions. These minimum flows for the McNary and John Day Pools are:

	<u>Instantaneous:</u>	<u>Weekly Minimum</u>
November:	50 kcfs	60 kcfs
December:	20 kcfs	60 kcfs
January:	20 kcfs	60 kcfs
February:	20 kcfs	60 kcfs
March:	50 kcfs	60 kcfs

The critical flow regulation is subject to the criteria stated within WAC 173-563. This regulation may be modified in the future subject to operational measures taken under the 2006 Columbia River Basin Water Supply Act (RCW 90.90).

Given the above review, the Water Board concludes that the proposed action will not create impairment to other water rights per the provisions and conditions established under the existing certificate (change order) and the conditions provided within this ROE/ROD.

And fourth, relative to the change request, the Water Board has evaluated extensive technical data and analyses related to any potential flow impacts affecting environmental resources, and determined that no empirically measurable, negative impacts will occur to environmental resources. This includes river hydrologic data, NOAA Fisheries flow-survival and river system survival data/analyses, University of Washington river system survival data, and data/analyses referenced by WADOE-sponsored studies.

B. Water Right Adjudication Process:

Water right adjudication does not affect this application.

C. Verification of Existing Water Right:

As noted above, the existing water use retains a certificate (per change order) of water right granted by the Washington State Dept. of Ecology. The Water Board has reviewed the water right documentation, reviewed the applicant's technical information concerning the water right, is familiar with the existing water use and land operations, and has conducted its own review of the water right relative to change/transfer conditions as discussed

above. It is concluded that the water right is in good standing, and subject to the conditions contained within this ROE/ROD for change/transfer.

D. Field Examination:

The field examination was conducted by Dr. Darryll Olsen, Chairman, BCWCB, with on-site visits during the month of September 2011, and previously in December 2006 and March 2007. Further, the Water Board is familiar with this area having recently reviewed other related applications and has previously toured the area with the applicant.

The field examination confirmed the information within the application request and technical information, which is more fully elaborated upon in this Report of Examination.

The field examination consisted of viewing the existing/proposed water use sites, existing pumping site, and the surrounding area. A visual examination of the site water use area was conducted, along with a review of the applicant's maps. In essence, the field investigations confirmed information provided by the applicant through personal communications and supporting application materials.

E. Technical Information, Investigations, or Reports Reviewed:

The Water Board has reviewed the applicant's WADOE file and records contained therein, including any reports/comments submitted by WADOE staff, and pertinent WADOE water right records.

The applicant has provided technical information, personal communications, and technical references requested by the Water Board, including data to verify the existing and proposed use areas; and the applicant has communicated extensively with individual Water Board members to answer specific questions about the change/transfer request. The Water Board has conducted a field examination to verify the information contained within the applicant's current water rights and supporting technical information. The Water Board has requested and received supplemental information from the applicant and has discussed future water usage needs with the applicant.

The Water Board has reviewed the standing of the water right, documentation provided by the water right holder concerning land holdings and management, and aerial photography for the existing and proposed water right place of use and purpose.

The Water Board has forwarded copies of the application change/transfer request and public notice to the state Dept. of Fish & Wildlife, the Dept. of Health, the tribes, and to all parties requesting such copies. No comments were received by these parties during the formal, and informal, public comment period for the change/transfer application.

The Water Board has reviewed this change request in detail with WADOE staff.

The Water Board has reviewed the applicant's SEPA compliance needs.

F. Associated Rights and Uses:

The subject certificate is being beneficially used/developed, and it is part of production agriculture operations in the nearby area owned/used by the applicant (see attachments), as served by an existing Columbia River pump station. Other water rights are not affected by the proposed change/transfer. The added well serves G4-26529C.

The Water Board has identified nearby water rights adjacent to the existing and proposed place of use, as indicated within the WRATS database; and identified nearby wells and surface water pump stations, as indicated on the WADOE website and data bases.

G. Review of Potential Impairment:

Because the proposed action will not increase the existing permitted/certificated water use (with change modifications), or increase the water amount put to allowed beneficial use, or likely affect other existing water rights (or applications for new water rights), no impairment is perceptible. The applicant's technical information has been reviewed on water use within the same body of water for management purposes and potential impairment.

The proposed change/transfer will be beneficial in the conservation and management of water resources from existing practices for the following reasons: 1) there will be no increase in diversion/withdrawal on an annual/seasonal basis after the change/transfer, compared to existing permitted/certificated withdrawals; and 2) better controls and monitoring on the quantity of water pumped will help ensure that the authorized quantity is not exceeded, as required under a metering and development plan.

The Water Board has published public notice of the proposed action and reviewed any potential technical issues concerning impairment.

Existing water rights located within the nearby area--within the same section and adjacent sections--were noted according to information contained within the WADOE WRATS data base system and visual inspection, and ongoing Water Board review within this area.

As noted above based on the applicant's technical information and the Water Board's review, it is concluded that no impairment would occur related to the water right change/transfer request.

The field investigation revealed that the applicant's request for change/transfer is consistent with existing land and water use practices within the immediate area, reflecting the development of and consistency with the Benton County Comprehensive Land Use Plan.

The change/transfer request is consistent with net beneficial use and return flow considerations contained in RCW 90.03.380 and other applicable statutes. The change will not increase water diversions or net depletions from the surface water source. More specifically, the subject application for change is consistent with public policy objectives of the state to provide for efficient use of water resources, to encourage supply of new or expanding uses through change/transfer of existing water rights, and to provide greater operational control to water managers.

Given the fact that no increase in water withdrawal from the existing surface water management source will occur relative to that permitted/certificated and allowed for beneficial use, there is no reason to expect any impairments to other water sources, consistent with the conditions and provisions provided under the existing water right modification order granted by the WADOE. Also, because the change/transfer proposed by the applicant does not affect withdrawals from new water sources—without regulation--or increase existing allowed net withdrawals/diversions from that currently permitted/certificated, the change/transfer request does not affect local conditions surrounding the status quo for water use, as permitted by WADOE.

This application decision has no impact on WADOE's existing water right decisions, the condition of local surface water or groundwater resources based on empirical data, or the priority for water rights between junior and senior water right holders within the local area. The Water Board does include conditions within this ROE to ensure that the public interest affecting water use is protected, and that they are consistent with actions that would be pursued by WADOE to avoid future or potential impairment problems or regulation actions.

H. Effect or Benefit to Public Interest:

A recent Washington State Supreme Court ruling has stated that "...a 'public interest' test is not a proper consideration when Ecology acts on a change application under RCW 90.03.380." PUD No. 1 of Pend Oreille County v. Dep't of Ecology, 70372-8 (2002). By extension, neither does the Water Board have authority to apply a public interest test when evaluating a change in water right request under RCW 90.03.380.

Nevertheless, the Water Board concludes that the requested change/transfer is not contrary to the public interest governing water use. To the extent review of public interest is applicable, the Water Board finds that the application for change is consistent with public policy objectives of the state to provide for efficient use of water resources, to encourage supply of new or expanding uses through change/transfer of existing water rights, to provide greater operational control to water managers, and to ensure no impairment exists.

Because the proposed action will not increase the existing allowed water use, or increase the water put to actual beneficial use, or result in an impact on other existing water rights or applications for new water rights, it does not change the existing status quo for water use impacts. Thus, no impairment is perceived, because of the change/transfer requested in the application. Water use is provided consistent with statutory requirements for beneficial use.

The proposed action does provide for a continuation of the existing beneficial use as stated within the certificate of water right, increasing the economic benefits to the state and local area by allowing for continued use and development of irrigated lands. The development is taking place in the land-use management area of Benton County.

This action is consistent with the intent of RCW 90.03.380, and 90.80 (amended May 10, 2001) and other applicable statutes; and it is consistent with Benton County's Comprehensive Land-Use Plan. No impairment is consistent with the public interest; all pertinent water right issues are addressed above; conditions are recommended within this ROE to further protect the public interest consistent with state water law.

The application for change/transfer is consistent with the public interest requirements for beneficial water use, and consistent with the procedural, technical, and legal review requirements by the state.

I. Consideration of Pending Applications:

The applicant's request will not affect the priority for action on pending new water rights or change/transfer applications filed with the Washington State Department of Ecology, for Benton County. Existing applications for Benton County were noted (WADOE data base); and no infringement on priority for action for these applications is perceived by (WADOE or the Water Board).

This application review also is consistent with legislative changes made in 2001 affecting the processing of change/transfer applications by the WADOE, as well as the amendments made to RCW 90.03.380.

Public notice has been provided for requesting all water right holders within the Benton County to submit existing or new water right change/transfer applications to the Benton County Water Board—or the WADOE. Applications received by the WADOE or Water Board are first reviewed for accuracy, completeness, and purpose to ensure they fall within the purview of the agency's and Board's jurisdiction. Those that are found wanting are referred back to the applicant for re-submittal or withdrawal. The remaining ones are acted on by a first-come, first-serve basis, taking into account received application's priority date and the technical/legal review requirements thereof.

FINDINGS AND CONCLUSIONS

1. The existing certificate (per change order) of water right and existing development actions and allowed beneficial use are verified.

2. The proposed change/transfer will result in no increase in the annual quantity of water authorized and is consistent with the requirements of RCW 90.03.380 and the surface water code. The change/transfer request will not increase the water right allowed use; the change/transfer will not increase allowed consumptive use from the designated sources, as designated by the water code.
3. There will be no increase in water withdrawal on an annual basis. In addition, continued monitoring of the quantity of water pumped will help ensure that certificated water withdrawals are not exceeded, for the changes requested. New seasonal withdrawals are regulated.
4. The Water Board has determined that impairment is not an issue affecting this change request; the change is within the same body of water for management purposes; and the purpose of use is allowed under RCW.90.03.380.
5. Public notice has been provided for the proposed action, and any public concerns have been reviewed by the Water Board. Public notice and application submittal has been forwarded to several state resource agencies/tribes/interested parties for comment; the agencies have provided no direct comments to the application.
6. The Water Board has reviewed the proposed project for SEPA compliance.
7. The proposed action creates no perceived detrimental impacts or impairments to other water right holders or permit applicants; adequate data and information exists to make this determination with confidence.
8. No protests have been made by third parties on this application.
9. The proposed action is consistent with the intent of RCW 90.03.380 and 90.80 (as amended May 10, 2001) and recent case reviews by the Washington State Supreme Court.
10. The proposed action supports the public interest concerned with the direct use of water rights, is consistent with allowed beneficial uses, and is consistent with local area economic development needs and land uses.
11. The Water Board has provided for specific conditions and provisions affecting the use of the water right, as identified below.

RECOMMENDED PROVISIONS

A. Provisions:

The applicant's water right change for an added point of withdrawal is conditioned by the following provisions:

1. The place of use for the water right is designated in the summary table above (under Water Board Decision); no change to existing place of use.
2. The points of diversion/withdrawal of water use are modified, as designated in the summary table above (under Water Board Decision).
3. Use of water under this authorization shall be contingent upon the water right holder's utilization of up-to-date water conservation practices, and taking into account cost-effectiveness for operations and economic viability.
4. The issued superseding certificate for CS4-13134C@3(A) shall not exceed 4.5 cfs, 1,050 acre-ft. annually, for year-round commercial and industrial use.

5. Per previous change orders by the Water Board/Ecology, the year-round use portion during the months of November through March are subject to instream flow regulations under WAC 173-563. These regulations establish minimum instantaneous and weekly instream flows for the mainstem Columbia River during critical flow conditions. These minimum flows for the McNary and John Day Pools are:

	<u>Instantaneous:</u>	<u>Weekly Minimum</u>
November:	50 kcfs	60 kcfs
December:	20 kcfs	60 kcfs
January:	20 kcfs	60 kcfs
February:	20 kcfs	60 kcfs
March:	50 kcfs	60 kcfs

The critical flow regulation is subject to the criteria stated within WAC 173-563. This regulation may be modified in the future subject to operational measures taken under the 2006 Columbia River Basin Water Supply Act (RCW 90.90).

6. By January 1, 2013, the applicant will notify the Water Resources Program, Central Region Office, WADOE, that project construction is completed, unless further extended for good cause.

7. Proof of appropriation (for actual beneficial use of water) is due to the Water Resources Program, Central Region Office, WADOE by January 1, 2016, unless further extended for good cause.

8. The WADOE shall undertake a proof inspection to certify actual development of the water right amended within this ROE.

9. An approved measuring device(s) shall be installed and maintained for the sources (all points of diversion) identified herein in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC.

Water use data shall be recorded weekly and shall be submitted annually to Ecology by January 31st of each calendar year typically.

10. The rule above describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed or available from Ecology as a document entitled "Water Measurement Device Installation and Operation Requirements."

11. At a minimum, the following information shall be included with each submittal of water use data: owner, contact name if different, mailing address, daytime phone number, WRIA, Permit or Certificate No., source name, annual quantity used including units, maximum rate of diversion including units, period of use, weekly meter readings including units, and peak flow including units for each month. In the future, Ecology may require additional parameters to be reported or more frequent reporting.

12. Ecology prefers web based data entry, but does accept hard copies. Ecology will provide forms and electronic data entry information.

13. Department of Ecology personnel, upon presentation of proper credentials and prior notification, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at

reasonable times any measuring device used to meet the above conditions, only to the extent otherwise allowed by law.

14. At the pump diversion site, the applicant shall install and maintain water intake screens complying with standards prescribed by the Washington State Dept. of Fish and Wildlife.

B. Mitigation Requirements:

None are required.

DECISION

Approvals:

The Benton County Water Conservancy Board hereby APPROVES the water right change/transfer described within this record of examination and record of decision, and submits this certificate for conditional approval to the Director of the Washington State Department of Ecology. If the Director takes no action within forty-five days of receipt of this ROE/ROD, then the Water Board's decision, as written, is final.

Approved Unanimously by the BCWCB
Kennewick, Washington
This 27th day of October 2011.

Approved and Signed on Behalf of the Water Board By:

Signed _____



Darryll Olsen, Ph.D., Chairman
Benton County Water Conservancy Board

Date Mailed to WADOE Director: on or before 11/11/2011

Received:

Date Stamp

Benton County
WATER CONSERVANCY BOARD

Record of Decision

Applicant: AgReserves Inc., %AgriNorthwest

Application Number: CS4-13134C@3(A)

This record of decision was made at an open public meeting of the Benton County Water Conservancy Board held on October 27, 2011, with any changes to ROE/ROD based on information received from the applicant and WADOE staff. This ROE/ROD was reviewed and approved by the undersigned.

(X) Approval:

The Benton County Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination and submits this record of decision and report of examination to the Department of Ecology for final review or consideration.

() Denial:

The Benton County Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination and submits this record of decision to the Department of Ecology for final review or consideration.

Signed _____ Date: 10/27/2011
Darryll Olsen, Ph.D., Chairman
Benton County Water Conservancy Board

Approves
Denies
Recused
Abstains
Excused Absence

Signed _____ Date: 10/27/2011
John Jaksch, Ph.D., Vice Chairman
Benton County Water Conservancy Board

Approves
Denies
Recused
Abstains
Excused Absence

Signed _____ Date: 10/27/2011
Matt Berg, Treasurer
Benton County Water Conservancy Board

Approves
Denies
Recused
Abstains
Excused Absence

Final ROE/ROD Mailed to the Department of Ecology, Regional Office of Ecology, via tracked mail, and other interested parties on or before 11/11/2011.